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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,762	07/03/2003	Philip Leder	HMV-060.01	7130

58475 7590 03/28/2006

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EXAMINER

DELACROIX MUIRHE, CYBILLE

ART UNIT PAPER NUMBER

1614

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,762	LEDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cybille Delacroix-Muirheid	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Dec. 9, 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-12 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-7, 27 and 29 is/are rejected.
- 7) ☒ Claim(s) 8-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

***Detailed Action***

The following is responsive to applicant's election and amendment received Dec. 9, 2005.

Claims 1-4, 13-26 are cancelled. New claims 27-30 are added. Claims 5-12 and 27-30 are currently pending.

Applicant's election, with traverse, of Species 6 represented by F16 (ID 274873) is acknowledged. Applicant traverses the requirement arguing that there would be no undue burden on the examiner to search all of the species. Said argument is not persuasive. The examiner respectfully maintains that the claimed species are chemically and structurally distinct and the search for one species would not necessarily result in a complete and comprehensive search of the other. The requirement is still deemed proper and is therefore made FINAL.

Claims 28 and 30 are withdrawn from consideration.

***Applicant's Claim for Priority Under 35 U.S.C. §§ 119(e) and/or 120***

The complete disclosure of provisional application 60/259,444 filed Jan. 3, 2001 and the complete disclosure of 60/297,739 filed June 12, 2001 to which the present application claims benefit under 35 USC § 119(e) have each been considered. Sufficient support and enablement as required by 35 USC § 112, first paragraph, for the presently claimed subject matter has been noted in both applications. Accordingly, for the purposes of examination and the application of prior art, the effective filing date of the present application is considered to the filing date of 60/259,444, Jan. 3, 2001.

***Claim Rejection(s)—35 USC 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the transformed cell" in line 5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejection(s)—35 USC 102***

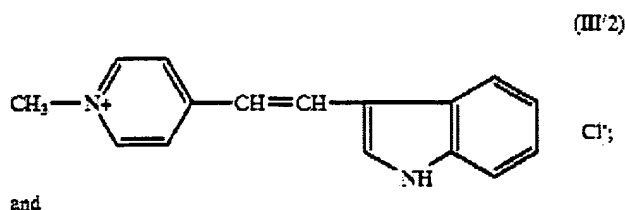
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-7, 27, 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Rondeau et al., 2005/0086748.

Rondeau et al. disclose composition useful in methods for dyeing keratinous fibres such as human hair, the composition comprising a cationic direct dye of the following formula



. Please see the abstract; [0086]. The compositions may be in the form of shampoos, creams, gels, liquids. Please see [0196].

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Rondeau et al. do not specifically disclose the compound where the anion is I-. However, the examiner refers to paragraph [0037], where X- represents an anion and the use of I- as the anion is readily envisaged by one of ordinary skill in the art.

According to MPEP 2131.02 “when the compound is not specifically named, but instead it is necessary to select portions of teachings within a reference and combine them, e.g., select various substituents from a list of alternatives given for placement at specific sites on a generic chemical formula to arrive at a specific composition, anticipation can only be found if the classes of substituents are sufficiently limited or well delineated. Ex parte A, 17 USPQ2d 1716 (Bd. Pat. App. & Inter. 1990). If one of ordinary skill in the art is able to “at once envisage” the specific compound within the generic chemical formula, the compound is anticipated.

Moreover, the claims are anticipated by Rondeau et al. because Rondeau et al. disclose contacting a cell(s), i.e. hair and scalp, with a composition containing the identically claimed compound using the claimed method steps. Accordingly, inhibition of the proliferation or stimulation of differentiation or induction of cell death of the cell(s) would be inherent.

Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Claims 5-7, 27, 29 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Cybill Delacroix-Muirheid** whose telephone number is 571-

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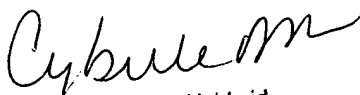
**272-0572.** The examiner can normally be reached on Mon-Thurs. from 8:30 to 6:00 as well as every other Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher Low**, can be reached on **571-272-0951**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CDM

March 20, 2006

  
Cybille Delacroix-Muirheid  
Patent Examiner, Group 1600